

**SUBJECT:** Modifying procedures related to central registry of child abuse and neglect

**COMMITTEE:** Human Services — committee substitute recommended

**VOTE:** 8 ayes — Frank, Hinojosa, Klick, Meza, Neave, Noble, Rose, Shaheen

0 nays

1 absent — Hull

**WITNESSES:** For — Andrew Brown, Texas Public Policy Foundation; (*Registered, but did not testify*: Jeremy Newman, Texas Home School Coalition; Ashley Pardo)

Against — Julia Hatcher, Texas Association of Family Defense Attorneys

On — Sophia Karimjee and Jaime Masters, Department of Family and Protective Services; Judy Powell, Parent Guidance Center; (*Registered, but did not testify*: Lana Estevilla, Texas Health and Human Services Commission; Thomas Parkinson)

**BACKGROUND:** Family Code sec. 261.002 establishes a central registry of reported cases of child abuse or neglect that is maintained by the Department of Family and Protective Services (DFPS).

Concerns have been raised that too many people are unnecessarily added to the central registry of reported cases of child abuse or neglect by DFPS, and there have been calls to make certain updates to the procedures for adding names to or removing names from the registry.

**DIGEST:** CSHB 2055 would establish procedures for removing certain names from the central registry of abuse and neglect, specify severity codes for each substantiated finding of abuse or neglect made by DFPS in an investigation, and implement time frames for the records retention schedule for each severity code in the central registry.

**Removing names from central registry.** DFPS would be required to establish an expungement review panel to review requests to have a person's name removed from the central registry.

*Expungement review panel.* The panel would be composed of DFPS employees and a representative of the public appointed by the DFPS commissioner.

The representative of the public would be considered a DFPS volunteer for the purposes of department access to criminal history information and would be required to serve a two-year term, but could not serve for more than three terms. A person could not serve as a public member of the panel if the person:

- had been convicted of or indicted for an offense involving child abuse or neglect;
- had been determined by DFPS to have engaged in child abuse or neglect; or
- was under investigation by DFPS for child abuse or neglect.

The members of the panel would be immune from civil or criminal liability for any act or omission that related to their duty or responsibility as a member of the panel if they acted in good faith and within the scope of their responsibility as specified by the bill.

*Request for removal.* A person seeking to have their name removed from the central registry would be required to submit a written request to the DFPS commissioner that included a letter describing the reason for the request. Only the following persons could make such a request:

- a parent, guardian, or managing or possessory conservator of the child;
- a member of the child's family or household as defined under applicable law; and
- a person cohabitating with the child's parent.

A person who had been determined by DFPS to have engaged in child abuse or neglect would not be eligible for a review for removal from the registry if:

- the incident of abuse or neglect resulted in a child fatality or near fatality;
- a court ordered termination of the parent-child relationship as a result of the abuse or neglect; or
- the person had been convicted of an offense involving child abuse or neglect.

A person could not make a request for removal before the third anniversary of the date DFPS made the most recent finding of child abuse or neglect against the person, and the panel would have to deny a person's request for removal if, after the person submitted the request, the department made a finding of child abuse or neglect against the person.

If the panel denied a request for removal after a hearing, the person could not submit a subsequent request until the first anniversary of the date the review panel rendered a decision on the person's last request.

*Hearing.* On receipt of a request for removal, the DFPS commissioner would have to notify the expungement review panel of the request, and the panel would set a date for a hearing on the request. The hearing would have to be held by the 60th day after the date the commissioner received the request, unless the panel had good cause for holding the hearing after that date. The panel would have to send written notice of the date, time, and location of the hearing to the requestor and to the regional office that conducted the original investigation.

The person requesting the review would have the burden of providing the panel with the basis for granting the request and could present evidence supporting the removal of the person's name from the registry, including:

- completion of treatment services or programs related to the finding;
- letters of support;

- evidence of activities that would reflect on changed behavior or circumstances; and
- any other relevant evidence showing changed circumstances.

The DFPS regional office that conducted the original investigation could present evidence in support of or in opposition to the request and could make a recommendation regarding the request.

A person could not have more than four hearings for the removal of a name from the registry.

*Decision of the panel.* The panel would be required to consider the following factors in making its decision:

- the department's findings regarding the nature and severity of the incident and the circumstances surrounding the incident;
- the number of findings of abuse or neglect involving the person;
- the person's age at the time of the incident;
- whether the circumstances that contributed to the incident still existed;
- actions taken by the person since the incident to prevent reoccurrence of abuse or neglect; and
- any other relevant information as specified by the bill.

The panel's decision would have to be by majority vote, and the panel would have to render a written decision including the reasons for the decision by the 45th day after the date of the hearing, unless there was good cause for an extension. The written decision would be provided to the person requesting the review and to certain DFPS officers.

The bill would require that DFPS remove a person's name from the central registry not later than the 10th business day after the date the expungement review panel rendered a decision to remove a person's name from the registry after conducting a hearing.

*Miscellaneous.* The DFPS commissioner could adopt rules to implement

the bill's provisions for removal of a name from the central registry, and such provisions would not apply to persons alleged to have abused or neglected a child in a facility or family home as specified by the bill, or to school investigations conducted under applicable law.

The review conducted by the panel would be confidential and would not be subject to disclosure under applicable law.

**Severity codes.** DFPS would be required to assign a severity code of low, moderate, serious, severe, near fatal, or fatal to each substantiated finding of abuse or neglect made by the department in an investigation relating to a person responsible for the child's care, custody, or welfare.

*Low.* The severity code "low" would be assigned to an isolated incident where there was a threat of harm but no injury to the child, and the incident was due to an accident or parental mistake that would not pose an ongoing risk of harm beyond the incident.

This code would be limited to substantiated findings of neglectful supervision. DFPS could not use this code in an investigation of a school as specified by the bill.

*Moderate.* The severity code "moderate" would be assigned to an incident of abuse or neglect in which there was a low or moderate risk of future harm to a child, there were no unmanaged dangers in the home, the incident did not result in removal, and DFPS closed the investigation with a recommendation for community services.

This code would be limited to substantiated findings of emotional abuse, neglectful supervision, and physical abuse consisting of an isolated incident of inappropriate discipline that did not require care by a medical provider or result in a substantial injury.

*Serious.* The severity code "serious" would be assigned in an incident of abuse or neglect in which there was a high risk of future harm to the child, there were unmanaged dangers in the home, and without services to the

family removal of the child would be necessary.

This code would be limited to substantiated findings of emotional abuse, neglectful supervision, refusal to accept parental responsibility, medical or physical neglect if the incident did not result in any harm or injury to the child, and physical abuse not resulting in serious injury.

*Severe.* The severity code "severe" would be assigned in an incident of abuse or neglect in which there was a very high risk of future harm, there were unmanaged dangers in the home, and a court rendered an order removing the child from the home.

This code would be limited to substantiated findings of sexual abuse, physical abuse resulting in serious injury, medical or physical neglect that resulted or could have resulted in impairment to the child's overall health or well-being, sex or labor trafficking, forced marriage, and abandonment.

*Near Fatal.* The severity code "near fatal" would be assigned to an incident of abuse or neglect where a physician had certified that a child was in critical or serious condition, and a caseworker determined that the child's condition was caused by the abuse or neglect of the child.

*Fatal.* The severity code "fatal" would be assigned to an incident of abuse or neglect that resulted in a child fatality.

*Miscellaneous.* The DFPS commissioner could adopt rules to implement the bill's provisions related to severity codes, and such provisions would not apply to a person alleged to have abused or neglected a child at a facility or family home regulated under the Human Resources Code.

**Central registry modifications.** The bill would specify time frames related to maintenance of a person's name in the central registry, requiring DFPS to maintain a person's name in the registry until:

- the fifth anniversary of the date of the finding for a case assigned the severity code "Moderate";

- the 15th anniversary of the date of the finding for a case assigned the severity code "Serious";
- the 30th anniversary of the date of the finding for a case assigned the severity code "Severe" or the 15th anniversary of that date if the court returned the child to the child's home during the period within which the court renders a final order for appointment of DFPS as conservator; and
- the 99th anniversary of the date of the finding for a case assigned the severity code "Near Fatal" or "Fatal."

If the department's finding of abuse or neglect was sustained by an administrative law judge, the department would have to maintain the name in the central registry until the 20th anniversary of the date of the finding or the date associated with the severity code as specified by the bill, whichever was longer.

If a person was found to have committed multiple acts of abuse or neglect with different assigned severity codes, DFPS would have to maintain the person's name in the registry until the latest date as specified by the bill.

People whose abuse and neglect case had been assigned the severity code "Low" would be excluded from the central registry, and DFPS would have to remove from the central registry the name of any person against whom the department made a finding of abuse or neglect when the person was younger than 18 if:

- two years had passed since such a finding;
- DFPS had not made any subsequent findings of abuse or neglect against the person;
- the person had not had a juvenile offender adjudication for any act other than the incident resulting in the finding; and
- the person had not had any criminal adjudications for an offense involving child abuse or neglect other than the incident resulting in the finding.

DFPS could not maintain a person's name in the central registry after the

date the department disposed of the case records related to the investigation.

**Notice.** DFPS would have to provide written notice to a person before adding that person's name and information to the registry. The notice would have to include a clear statement of what the registry was and an explanation of the consequences of being listed in the registry.

**Other provisions.** DFPS could retain records related to an investigation in accordance with the department's records retention schedule after a person's name had been removed from the central registry in order to perform required background checks and to conduct risk and safety assessments.

DFPS would have to comply with a court order directing expunction of the department's records concerning a person for whom the department maintained records.

The bill would take effect September 1, 2021, and the bill's provisions relating to severity codes and consideration of such codes for maintenance of the central registry would apply only to findings of abuse or neglect made by DFPS on or after May 1, 2022.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of \$2.4 million to general revenue through fiscal 2023.